BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
Interconnection and Resale	)	CC Docket 94-54
Obligations Pertaining to	)	
Commercial Mobile Radio Services	)	

REPLY COMMENTS OF THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

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SUMMARY

In the mobile services arena, the Commission has consistently embraced regulatory principles which favor marketplace-based solutions over regulation. The Commission's recent grant of the 30 MHz PCS licenses in the A and B block is just one example of continued efforts to foster competition in the mobile services market. The record in this proceeding overwhelmingly supports continuation of the Commission's efforts in that direction. In light of the competitive, dynamic nature of CMRS, the Commission is well-advised in adopting its tentative conclusions to:

- refrain from imposing a general interstate interconnection obligation on CMRS providers;
- extend the current cellular resale obligation to all CMRS providers;
- reject proposals to impose reseller switch requirements upon CMRS providers; and
- refrain from imposing further regulatory requirements upon CMRS roaming services.

Recent court pronouncements affirming cellular's lack of bottleneck control as well as the grant of these A and B block PCS licenses in June serve to further validate the Commission's regulatory forbearance efforts.

The most vociferous opponents of the Commission's forbearance efforts originate primarily from resellers interested only in promoting their own interests at the expense of efficiency concerns and consumer welfare. In their efforts to debate the precise level of competition existing within the

mobile services marketplace, they obscure the relevant inquiry. Absent a demonstration of monopoly or bottleneck control, mandatory interconnection, in all its forms, is not warranted. It is beyond dispute that cellular systems do not constitute bottleneck monopolies. And, without this prerequisite determination, commenter proposals to mandate direct CMRS and reseller switch interconnection must fall as a matter of course. Moreover, considering the intensely regulatory nature of a reseller switch requirement, it simply should not be imposed in an increasingly competitive market.

True competition can only come from spectrum-based competitors who can add to capacity and output. With the recent grant of the 30 MHz PCS licenses in the A and B block, the Commission ensures that true competition will continue to flourish within the mobile services market.

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The Cellular Telecommunications Industry Association,[1] by its attorneys, submits its Reply Comments in the above-captioned proceeding.[2]

INTRODUCTION

Section 332 of the Communications Act of 1934, as amended ("Act"),[3] exemplifies Congress' preference for market forces to primarily shape the development of mobile services. In 1993, Congress revised Section 332 to reflect this preference, empowering the Commission to forbear from tariffing and other Title II common carrier constraints for commercial mobile radio services ("CMRS"). In so doing, Congress recognized that the

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[1] CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service providers, including cellular, personal communications services, enhanced specialized mobile radio, and mobile satellite services.

[2] Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Second Notice of Proposed Rule Making in CC docket 94-54, FCC 95-149 (rel. April 20, 1995) ("Second Notice").

[3] 47 U.S.C. § 332.

principles underlying Title II common carrier regulation were intended for the monopoly telecommunications provider -- regulation was designed to achieve market outcomes approximating those that occur in a competitive milieu. Finding that marketplace forces operating within the mobile services market were sufficient to allocate resources efficiently and equitably, Congress authorized a significant relaxation of traditional common carrier regulatory constraints for CMRS providers and their customers.

The Commission's CMRS regulatory agenda to date fully embraces the marketplace-based approach adopted by Congress. This proceeding marks another opportunity for the Commission to foster the full competitive growth and development of CMRS. Thus, to maximize development of a diverse, competitive mobile services market, the Commission should, consistent with its tentative conclusions:

- refrain from imposing a general interstate interconnection obligation on CMRS providers;
- extend the current cellular resale obligation to all CMRS providers.
- reject proposals to impose reseller switch requirements upon CMRS providers; and
- refrain from imposing further regulatory requirements upon CMRS roaming services.

Nothing presented in the record necessitates any diversion from the Commission's proposed course of action. In fact, recent court pronouncements affirming cellular carriers' lack of bottleneck control as well as the grant of the A and B block

broadband PCS licenses, serve to further validate the Commission's regulatory forbearance efforts. By the recent award of these broadband PCS licenses, the Commission has ensured that new competitors will be providing broadband PCS service to the public long before the Commission's work in this docket is completed. In so doing, the Commission properly has opted to rely on true competition, not imperfect regulation, for the mobile services market.

Several commenters, primarily cellular resellers, continue to assert that competition within the cellular industry is inadequate. Their efforts to debate the precise level of competition within the mobile services marketplace, in addition to being factually wrong, obscures the relevant subject of inquiry. Absent a demonstration of monopoly or bottleneck control, interconnection requirements are simply not warranted. And it is beyond dispute that cellular systems do not constitute bottleneck monopolies. Without this prerequisite demonstration, commenter proposals to mandate direct CMRS and reseller switch interconnection must fall as a matter of course.

I. THE COMMISSION SHOULD REFRAIN FROM IMPOSING DIRECT CMRS INTERCONNECTION REQUIREMENTS.

CTIA concurs with the Commission's conclusion that it is premature to mandate interstate interconnection for all CMRS providers. Throughout this proceeding, CTIA has maintained that the Commission should not mandate interconnection because CMRS providers lack the requisite substantial, persistent market power. Moreover, due to technological constraints, any current

proposals for direct CMRS interconnection are speculative.[4] The overwhelming number of commenters support the Commission's tentative conclusion that direct interconnection should not be imposed.[5]

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[4] CTIA, in its earlier comments, also asked the Commission to rely upon Section 2(b) of the Act to preempt any state-imposed interconnection obligations. CTIA noted as well that the Section 208 complaint process sufficiently protects the public interest from instances in which voluntary activities arguably have led to or reflect market failure. See Comments of the Cellular Telecommunications Industry Association in CC Docket 94-54 at 15-19 (June 14, 1995) ("CTIA Comments") (citing Implementation of Section 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order in GN Docket 93-252, 9 FCC Rcd 1411, 1479 (1994) ("we do not forbear from Sections 206, 207, and 209, so that successful complainants could collect damages" in the event of Section 201 violations) ("CMRS Second Report"). Regarding interconnection complaints arising under Section 201 of the Act, CMRS carriers, of course, are not liable for monetary damages unless and until the Commission first orders such carriers to affirmatively provide the form of interconnection under dispute. See Petition of Tri-City Telephone Co., Schenectady, N.Y., Memorandum Opinion and Order in Docket 18741, 20 FCC 2d 674 (1969); Comcast Cellular Communications, Inc. Comments at 16-19; New Par Comments at 15-17.

[5] The General Services Administration ("GSA") generally favors an interconnection obligation because it supports consistent regulations for wireline and wireless services. GSA Comments at 2-6. While CTIA agrees with GSA that interconnection serves the public interest and creates a "network of networks," CTIA submits that the existence of persistent, substantial market power should demarcate the boundary between compulsory and voluntary interconnection. Because LECs possess monopoly power in their market, mandated interconnection is warranted; the converse, though, is true for the mobile services market. General Communications, Inc.'s ("GCI"), proposal that the Commission "adopt a policy that requires interconnection between CMRS providers upon a bona fide request," GCI Comments at 2, should be rejected for this reason. In addition, because adoption of GCI's proposal might create unintended opportunities for gaming, i.e., larger rivals would have incentives to request interconnection from new entrants in an effort to raise the new entrants' costs, the Commission should reject GCI's proposal as well.

The D.C. Circuit's recent confirmation that wireless services, unlike wireline, do not possess bottleneck market power further supports regulatory forbearance. Specifically, the circuit court noted that "[i]n the cellular market . . . there are two competing providers in every area of the country. Because no cellular carrier has control over all of the calls originated in its area, there is no 'mobile bottleneck' parallel to the 'landline bottleneck.'"[6] This factual determination requires the Commission to refrain from regulating direct CMRS interconnection as no CMRS firm possesses the requisite ability to exercise market power or maintain control over essential facilities.[7]

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[6] SBC Communications, Inc. v. Federal Communications Commission, No. 94-1627, slip op. at 8-9 (D.C. Cir. June 23, 1995) (citing Applications For Consent to the Transfer of Control of McCaw Cellular Communications, Inc. and its Subsidiaries, Memorandum Opinion and Order, 9 FCC Rcd 5836, 5862-5863 (1994) ("the BOCs' historical, ubiquitous wireline exchange bottleneck [is not] perfectly analogous to the local cellular service market. Cellular service is relatively new, still serving only a small percentage of the population. Moreover, the existence of two facilities-based carriers has created a degree of rivalry not present in 'wireline' exchange services under the former Bell System, and competition from other wireless systems, such as PCS, is on its way")) (citations omitted). See also CMRS Second Report, 9 FCC Rcd at 1478 ("there is no record evidence that indicates a need for full-scale regulation of cellular or any other CMRS offerings;" "cellular providers do face some competition today, and the strength of competition will increase [in] the near future"); id. at 1499 ("CMRS providers do not have control over bottleneck facilities"); United States v. Western Electric Co., Inc., No. 82-0192, slip op. (D.D.C. Aug. 25, 1994) (non-BOC cellular systems and BOC-affiliated cellular systems outside their local exchange regions "do not constitute bottleneck monopolies").

[7] Attached as an exhibit to its Comments, AT&T includes a "Declaration of Bruce M. Owen in Response to the Second Notice of (continued...)

The Commission has recognized, as well, that the CMRS marketplace is competitive with services ranging from cellular, SMR, paging, and PCS.[8] In fact, its efforts to increase output and, concomitantly, the level of competition, has reached fruition with the recent issuance of the broadband PCS licenses on the A and B block.[9] The Commission's policy favoring competition over regulation provides consumers with direct price and quality benefits by allowing new spectrum-based entrants to compete with established spectrum-based carriers.

A refusal to mandate interconnection will improve consumer welfare as well by avoiding costs and inefficiencies. Because many CMRS networks are based on differing technologies, the techniques for mandatory interconnection cannot be specified as a general rule. In general, interconnection via the wireline

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[7](...continued)
Proposed Rule Making." See Comments of AT&T Corp., Exhibit 1. Dr. Owen's analysis concerning the relevant geographic and product markets for purposes of CMRS interconnection emanates from a different starting point than that of CTIA. Importantly, both analyses conclude that direct CMRS interconnection is unwarranted.

[8] Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Third Report and Order in GN Docket 93-252, 9 FCC Rcd 7988, 7996 ("all CMRS -- including one-way messaging and data, and two-way voice, messaging and data -- are competing services or have the reasonable potential to become competitive services in the CMRS marketplace. . . . Actual competition among certain CMRS services exists already and, more importantly, the potential for competition among all CMRS services appears likely to increase over time due to expanding consumer demand and technological innovation.")

[9] FCC News Release, "FCC Grants 99 Licenses for Broadband Personal Communications Services in Major Trading Areas" (released June 23, 1995).

network is the most efficient method of providing ubiquitous CMRS services. When it becomes more efficient to establish direct interconnection among CMRS providers rather than pay the LEC for transport and switching services, the market, and not regulation, will logically command direct CMRS interconnection.

II. THE COMMISSION SHOULD EXTEND THE CURRENT RESALE REQUIREMENT TO ALL CMRS PROVIDERS.

As a matter of regulatory parity, all CMRS should be subject to resale requirements.[10] Moreover, despite commenter suggestions to the contrary,[11] SMR operators who elect to provide interconnected services for profit should be subject to resale obligations. Traditionally, SMR providers retained their classification as private carriers by not charging for interconnected service. To the extent that certain SMR providers continue in this tradition, and can demonstrate that they are unable to provide capacity for resale, they need not be subject to resale requirements.[12] But, once SMR providers elect to

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[10] See CTIA Comments at 22-26.

[11] See, e.g., American Mobile Telecommunications Association, Inc. Comments at 9-14; Nextel Communications, Inc. Comments at 8-15; Geotek Communications, Inc. Comments at 4-9; The Southern Company Comments at 3-9; The Personal Communications Industry Association Comments at 15-19.

[12] Commercial mobile radio services are defined as "any mobile service . . . that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users to be effectively available to a substantial portion of the public." 47 U.S.C. § 332(d)(1). As the Commission noted in the CMRS Second Report, while most SMR licensees provide: (1) for-profit service, (2) to the public, "classification of all SMR systems turns on whether they do, in fact, provide interconnected service". See CMRS Second Report, 9 FCC Rcd at 1450-1451.

charge for interconnection, then they must become subject to maintain the principle of regulatory parity upon which Section 332 is founded.

Congress amended Section 332(c) in 1993 as a means to ensure that "services that provide equivalent mobile services are regulated in the same manner."[13] Therefore, it established "uniform rules" governing all CMRS offerings and directed "the Commission to review its rules and regulations to achieve regulatory parity among services that are substantially similar."[14] Consistent with the congressional mandate, the Commission, in its continued adherence to Section 332, must ensure that similar services are treated alike. Imposing equivalent resale obligation for all CMRS providers, including SMR providers offering interconnected service for profit, is a critical step in fulfilling this objective.

III. THE COMMISSION SHOULD REJECT ANY RESELLER SWITCH PROPOSALS AS ALL CMRS PROVIDERS LACK THE REQUISITE MARKET POWER.

The record contains assertions by several commenters, largely cellular resellers, who seek a general resale requirement that encompasses the mandated interconnection of a reseller switch to a cellular carrier's facilities.[15] As noted above,

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[13] H.R. Rep. No. 103-111, 103d Cong., 1st Sess. 259 (1993).

[14] Id.

[15] See, e.g., Time Warner Telecommunications ("TWT") Comments at 1-22; Telecommunications Resellers Association ("TRA") Comments at 1-36; The National Wireless Resellers Association ("NWRA") Comments at 1-19; Cellular Service, Inc. & (continued...)

CTIA favors Commission adoption of a general resale obligation for all CMRS providers. But the Commission should not adopt a reseller switch requirement. As CTIA noted in its earlier comments, there are numerous reasons why the Commission should reject the reseller switch proposal, most importantly, because its costs far outweigh its benefits, and CMRS providers lack the requisite market power necessary to mandate switch interconnection.[16]

A reseller switch requirement is an intensely regulatory solution that requires, among other things, unbundling of the CMRS provider network, an extremely costly and time-consuming proposition which drains Commission resources and imposes substantial compliance costs upon CMRS providers.[17] It simply

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[15](...continued)
ComTech Mobile Telephone Company ("CSI and ComTech") Comments at 1-13; Connecticut Telephone and Communications Systems, Inc. Comments at 1-10. See also GSA Comments at 7 ("The reseller switch proposal illustrates the importance of both interconnection and unrestricted resale of CMRS services.")

[16] See CTIA Comments at 27-37. Moreover, to ensure that state legislation does not thwart the realization of legitimate federal objectives, the Commission must preempt state reseller switch interconnection requirements as well. Id. at 39-40.

[17] In its comments NWRA demonstrates a fundamental misunderstanding of the Commission's role in examining costs to determine the efficacy of a reseller switch proposal. See NWRA Comments at 8-13. Contrary to NWRA's assertions, id. at 9, the Communications Act does empower the Commission to factor the "'cost'" of proposed regulation, including administrative and compliance costs, into its analysis whether to adopt such regulation. NWRA claims as well that "there is no cost or risk to consumers from allowing switch-based resale as another marketplace option. Rather, the risk and cost is wholly on the reseller." Id. at 13. Apparently, NWRA fails to (continued...)

should not be imposed in an increasingly competitive market. Factoring in the imminent rollout of PCS service from the A and B block PCS providers, it is clear that the costs imposed by this drastic regulatory measure outweigh the benefits, if any. Simply put, by the time the Commission could finalize the myriad of rules necessary to impose a reseller switch requirement, including rules governing CMRS network unbundling and separate pricing,[18] real, facilities-based competition in the form of new PCS providers will already be a reality.[19]

Most important, a reseller switch interconnection requirement should only be mandated in those markets where the service provider exercises substantial persistent market power, i.e., bottleneck or monopoly control. In the absence of such substantial, persistent market power, mandated interconnection is unwarranted. There is overwhelming agreement that CMRS

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[17](...continued)
consider the costs imposed upon the cellular carrier operating under a reseller switch interconnection agreement. Considering NWRA's specific acknowledgment that switch installation and other related costs incurred by resellers in the major markets "may well run as high as several million dollars," id, success is not guaranteed. Thus, even though a switch interconnection agreement may call for the recovery of the cellular carrier's costs to supply switched interconnection, cellular carriers will be unable to recover such costs if the reseller's poor business judgment results in bankruptcy. And, in that scenario, the unrecovered costs will be passed on to the consumer. More importantly, regulatory review of interconnection agreements can delay to the public the introduction of new technologies and services.

[18] As a further complication, the various proponents of a reseller switch requirement cannot even agree as to how such unbundling should proceed.

[19] See infra notes 27 and 28.

providers, including cellular providers, do not control bottleneck facilities.[20]

Because all CMRS providers lack the requisite market power, there is no need to consider further the utility of a reseller switch proposal, especially given the costs imposed by such a requirement in a competitive market. As the following discussion makes clear, the various proponents of the reseller switch proposal, despite their vociferous attempts, are unable to provide a valid basis for Commission adoption of their proposal. Specifically, various resellers make the following arguments in support of their proposal for mandatory interconnection of a reseller switch:

- that the cellular market is not fully competitive and that a reseller switch proposal will provide such needed competition;
- that the Commission is incorrect in considering the impending entry of PCS in its assessment of the competitiveness of the CMRS market; and
- that the Hush-a-Phone line of cases requires mandatory interconnection of a reseller switch to a cellular carrier's facilities.

Each of these arguments is unpersuasive.

Several commenters, notably, TWT and TRA, continue to dispute the ultimate competitiveness of cellular. TWT claims, for example, that "all cellular carriers, whether they are

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[20] See supra note 6. Moreover, resellers are unable to offer economic theory to support their proposition that the cellular switch is the appropriate location for unbundling of the cellular network. Economic analysis, though, fully supports the notion that true competition is fostered when a provider is able to increase capacity or output, something a switch-based reseller is patently unable to do.

affiliated with LECs or not, [should] provide interconnection and unbundling to all other CMRS carriers as long as the cellular carriers continue to have market power (i.e., until there are additional facilities-based competitors providing equivalent two-way voice and data services)."[21] TRA claims that "[c]ellular markets are far from fully competitive, with substantial opportunities for anticompetitive conduct by incumbent carriers."[22]

Notwithstanding these assertions, the considered opinion of the jurist who has devoted vastly more time to telecommunications than any other federal judge in the history of the republic, not to mention that of the D.C. Circuit, is that cellular is not a bottleneck.[23] TWT and TRA thus merely express their own self-interested opinions -- not only is there is no record support for their conclusions, the record is to the contrary.[24]

Another asserted basis for imposing a resale switch requirement lies in the claim that PCS is not yet "an actual potential competitor" to cellular. For example, TWT opines that

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[21] TWT Comments at 14. TWT claims as well that "[t]he Commission has not explained why it imposes quite specific interconnection obligations on wireline carriers with market power but not on wireless carriers with market power." Id. at 16, note 31.

[22] TRA Comments at 17. TRA also claims that "under the Commission's own concept of controlling bottleneck facilities, the cellular carriers in each market control such facilities." Id. at 21.

[23] See supra note 6.

[24] Id.; see also infra notes 27 and 28.

"[a]lthough competition from new wireless providers such as [PCS] is on the horizon, it remains years away."[25] It further claims that it "may be months" before the Commission licenses the broadband PCS A and B block, and that "merely licensing broadband PCS would have little near-term competitive impact on the existing cellular carriers."[26]

TWT's analysis is clearly flawed. By TWT's own admission, a reseller switch proposal provides, at best, short-term competition until spectrum-based providers are on-line. Contrary to TWT's prediction, the Commission has already licensed the A and B block.[27] Moreover, the Commission is within its discretion to rely upon the impending entry of PCS.[28] Apparently, TWT

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[25] TWT Comments at 2.

[26] Id. at 11-12. For this reason, TWT claims that "[i]n the near term, TWT and other new wireless providers could offer additional innovative service offerings to consumers in markets across the country through a mandated switch-based resale policy." Id. at 2.

TWT certainly cannot claim that a reseller switch is crucial to its competitiveness. See Eben Shapiro, "Time Warner Wins Cellular Customers in Rochester, N.Y.," Wall St. J. (July 3, 1995) (Without mandatory reseller switch interconnection, TWT is still considered a "very formidable competitor" to the cellular telephone business in Rochester).

[27] In addition, several licensees have announced near-term plans for roll-out of service. See CTIA Comments at note 11 (summarizing Pacific Bell and APC's plans to commence PCS service within the coming months).

[28] See Petition of the People of the State of California and the Public Utilities Commission of the State of California to Retain Regulatory Authority Over Intrastate Cellular Service Rates, Report and Order in PR Docket No. 94-105, FCC 95-195, at ¶ 32 (rel. May 19, 1995) ("While PCS is not yet available to the public, it is an accepted antitrust principle that a firm may be (continued...)

believes that it is beneficial to impose substantial costs upon a competitive, burgeoning industry in an effort to provide, albeit temporary and limited, competitive benefits. TWT appears alone in its belief.

Finally, several commenters, notably TRA, NWRA, and CSI and ComTech, claim that the Hush-a-Phone doctrine, i.e., a line of cases which finds that interconnection is in the public interest so long as it is privately beneficial without being publicly detrimental, requires the adoption of a reseller switch policy.[29] These commenters again obscure the relevant inquiry. What they fail to note in their respective analyses is that the Hush-a-Phone doctrine has been applied in the case of interconnection to a monopoly provider, and of a type that does not impose costs upon the carrier.

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[28](...continued)
considered in competitive analysis if it could enter the market in question. Under the caselaw potential entry must be reasonably prompt, a typical period being two years from the present in order to expect a significant impact on existing competitors, and there is little doubt that PCS licensees will enter the market for CMRS in competition with cellular providers within this timeframe") (citations omitted); id. at ¶ 33 ("Available evidence indicates that cellular companies, faced with the near-term entry of PCS, have reacted by preparing for impending competition, i.e., by lowering prices and adopting new technologies. For example, there are reports that observable declines in cellular prices are attributable in part to cellular carriers' knowledge that reasonably soon they will face new competition from PCS licensees. . . . all evidence suggests that [entry] is empirically real and in the very near term will be substantial and pervasive.")

[29] See TRA Comments at 7-17 (extensive documentation of the various applications of Hush-a-Phone to FX, CCSA, MTS, WATS, etc.); NWRA Comments at 2-8; CSI and ComTech Comments at 5-12.

Moreover, the kind of interconnection requested by the resellers via a reseller switch simply is not analogous to interconnection of CPE. Rather, resellers seek unbundled interconnection as carriers, i.e., facilities- but not spectrum-based CMRS providers. Hush-a-Phone did not deal with, nor can it be made to stand for, the proposition that a generalized duty to provide unbundled interconnection can be found in the Communications Act. If that were so, Section 201 would have no meaning. In fact, the general rule applies here. In the absence of substantial and persistent market power, the government should not compel interconnection.[30]

On the whole, resale displays marginal utility in the mobile services marketplace.[31] Because resellers are incapable of expanding capacity or output, their long-term role in an increasingly competitive market is that of price taker and no

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[30] As CTIA noted above, all CMRS providers should be subject to the current general resale requirements. Moreover, CTIA supports interconnection on an efficient basis through the LEC or otherwise. But neither of these obligations should encompass a duty to provide unbundled interconnection to a reseller for connection of its own switch.

[31] The Commission originally adopted prohibitions against resale restrictions as a means to inhibit "discriminatory" pricing, i.e., the selective offering of excessive volume discounts. To the extent that cellular resellers complain regarding insufficient margins, then, by their own admission, the raison d'etre for imposing resale requirements is satisfied, i.e., "discriminatory" pricing no longer exists. And, if such practices are not occurring today, the introduction of additional capacity from spectrum-based providers will certainly not facilitate their reoccurrence. Thus, resellers have no real prospects for a more "accommodating" pricing structure; to the extent that they continue to advocate such an accommodation, they essentially request the Commission to guarantee their prosperity by way of forcing inefficient arrangements.

more. As the United States General Accounting Office ("GAO") found, "[b]ecause resellers do not own or operate cellular systems, they do not compete with the carriers at the wholesale level. Under the current market structure, resellers' presence in a market will not generally lead to lower rates to consumers."[32]

In sum, resale, even switch-based resale, will never function as a significant substitute for spectrum-based providers who serve to increase overall output and thereby facilitate competition, including competitive prices. The administrative and compliance costs necessary to implement the reseller switch proposal counsel against the adoption of such a complex regulatory regime when competitive solutions in the form of spectrum-based PCS providers exist in the marketplace. With such 30 MHz PCS licensees looming on the horizon, any possible policy justifications for a reseller switch proposal necessarily fade into the background.[33]

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[32] See GAO Report to the Honorable Harry Reid, U.S. Senate, "Telecommunications: Concerns About Competition in the Cellular Telephone Service Industry," at 19 (July 1992); see also id. at 21-22 (Resellers "do not compete directly with carriers at the wholesale level and their presence does not alter the industry's duopoly market structure. . . . For example, the Federal Trade Commission recently stated, 'It is unlikely that cellular resellers will provide effective competition at the wholesale level to the two facilities-based cellular carriers.' Moreover even the FCC recently noted that resellers do not appear to provide significant competition to cellular carriers.") (citations omitted).

[33] If resellers desire to legitimize their role as long-term, facilities-based CMRS competitors, they would be well-advised to bid for the remaining PCS licenses and abandon further efforts to impose a reseller switch requirement.

IV. THE COMMISSION SHOULD REFRAIN FROM FURTHER REGULATING ROAMING SERVICES.

As CTIA noted in its comments, consumers benefit from contractual roaming arrangements, importantly, as a means to protect end user customers from abusive practices. For example, the current system of private negotiations permits cellular carriers the flexibility to: (1) suspend roamer services between two city pairs for a limited period of time to protect against fraud; and (2) withhold roaming agreements in limited instances to protect their customers against roamer traps, i.e., CMRS operators who unreasonably overcharge.[34]

There is no question that roaming, as offered to the end-user cellular customer, is a common carrier service, i.e., under the Commission's rules, roaming must be provided on a non-discriminatory basis.[35] But the common carrier status accorded roaming service generally should not trigger a requirement for mandatory regulatory supervision surrounding the negotiation of intercarrier roaming agreements.

Intercarrier arrangements to provide seamless roaming service must be based upon voluntary negotiations. The Section 208 complaint process is sufficient to protect CMRS providers if occasions arise in which other CMRS providers engage in

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[34] CTIA comments at 19-22.

[35] See e.g., GCI Comments at 5; American Personal Communications Comments at 7-9.

statutorily unreasonable practices.[36] The current private contractual negotiations serve to foster competition and efficiency for all CMRS providers while permitting CMRS firms to protect their customers from the occasional abusive licensee or customer fraud. By forbearance, the Commission will not lessen the requirement to, nor the value of, providing roaming services indiscriminately.

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[36] 47 U.S.C. § 208. As the Commission has noted, "the Section 208 complaint process would permit challenges to a carrier's rates or practices and full compensation for any harm due to violations of the Act." CMRS Second Report, 9 FCC Rcd at 1479.

CONCLUSION

CTIA respectfully requests that the Commission, consistent with CTIA's earlier comments and the reasons expressed herein: (1) refrain from imposing a general interstate interconnection obligation upon CMRS providers; (2) extend the current cellular resale obligation to all CMRS providers; (3) reject proposals to impose a reseller switch interconnection requirement upon CMRS providers; and (4) refrain from further regulating roaming services.

Respectfully submitted,

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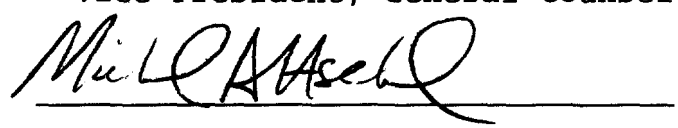

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